



**ADMINISTRATION OF WORKERS'
COMPENSATION PROGRAM**

**From The Office Of State Auditor
Claire McCaskill**

The workers' compensation program did not always ensure injured parties received timely medical and temporary disability benefits.

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PERFORMANCE AUDIT



Office of
Missouri State Auditor
Claire McCaskill

September 2002

State officials have not required employers/insurers to report injuries within required timeframes resulting in delayed payments to employees

This audit evaluated if the management of the state's workers' compensation program ensures the timely payment of benefits to employees with work-related injuries and illnesses. State law requires employers/insurers to report these injuries to the state workers' compensation division within 10 days of learning of an accident.

Vast majority of injuries reported late or not at all

During the 4-year period reviewed, auditors found employers/insurers failed to report 93 percent of employees' injuries within the prescribed 10 day period, which delayed employee benefit payouts and increased case costs by nearly \$300 million. In addition, 249,238 of the 428,495 delayed cases were not reported within 30 days and 14,660 were never reported. (See page 2)

Division officials have not enforced state workers' compensation laws

State law allows fines and penalties for employers/insurers who report injuries late, but division officials did not have authority to use these sanctions to improve reporting compliance except through prosecution. However, officials did not send warning letters to persistent violators as some states do, and did not refer these violators to the Attorney General's office for prosecution. Division officials said they could be more effective if they had the authority to penalize entities without going through the Attorney General's office, as is done in other states. Current law only allows the Attorney General to prosecute and assess penalties. (See page 4)

Delays in medical benefit payments resulted in significant hardships

Some employees did not receive timely medical or lost wage benefits after incurring injuries, because their employers/insurers disputed their claims. State law does not provide protection for injured employees when employers/insurers deny or dispute claims. When employers/insurers dispute claims, employees may have to wait several months or years for a binding ruling by a division judge to receive benefits. (See page 8)

Administrative improvements needed in the workers' compensation program

While visiting regional adjudication offices, auditors noted claimants without attorneys did not always know why they were invited to conferences in which critical decisions may

YELLOW SHEET

be made about their benefits. Although division staff send each claimant a "Notice of Conference" letter, the letter did not inform the claimant of the nature or reason for the conference. The letter also failed to inform claimants of their rights under state workers' compensation laws. Without this information, claimants may make decisions that could negate their ability to obtain further medical or other benefits. (See page 11)

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ADMINISTRATION OF WORKERS' COMPENSATION PROGRAM

TABLE OF CONTENTS

	<u>Page</u>
STATE AUDITOR'S REPORT	1
RESULTS AND RECOMMENDATIONS.....	2
1. Employers and Insurers Frequently Reported Injuries Late Resulting in Higher Case Costs and Delayed Payments to Employees	2
Conclusion	6
Recommendations.....	6
2. Timely Benefits Were Not Always Provided to Claimants	8
Conclusion	10
Recommendation	10
3. Administration of the Workers' Compensation Program Could Be Improved	11
Conclusion	12
Recommendations.....	12
 APPENDIXES	
I. OBJECTIVES, SCOPE AND METHODOLOGY	13
II. BACKGROUND	14
III. EXCERPTS FROM INJURED EMPLOYEE COMPLAINT LETTERS.....	15



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The State Auditor's Office audited the state's workers' compensation program. The audit objectives were to assess the vulnerabilities of the workers' compensation program and determine if the program was managed efficiently and effectively to ensure timely benefits to injured employees.

We concluded improvement was needed to ensure injured employees properly received their benefits. Audit tests disclosed (1) 93 percent of employee injuries for closed cases were reported late during the 4-year period ended June 30, 2001, resulting in untimely benefits and increased case costs, (2) missing benefit cost data and untimely employer/insurer benefit reporting resulted in the inability to determine if benefits were paid or paid timely, and (3) various administrative issues impacted case processing timeliness and effective program management.

The audit was conducted in accordance with applicable standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and included such tests of the procedures and records as were considered appropriate under the circumstances.

Claire McCaskill
State Auditor

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RESULTS AND RECOMMENDATIONS

1. Employers and Insurers Frequently Reported Injuries Late Resulting in Higher Case Costs and Delayed Payments to Employees

During fiscal years 1998 through 2001, employers, insurers and some state agencies did not report 428,495 of 459,673 (93 percent) employee injuries for closed cases within 10 days of knowledge of an accident as the law requires. Of the cases not properly reported:

- 413,835 (97 percent) were not reported within 10 days of which 249,238 were still not reported within 30 days.
- 14,660 (3 percent) were not reported.

Non-complying employers and insurers could continue to do so because Division of Workers' Compensation (division) personnel did not refer persistent late reporters to the Attorney General's office for prosecution. The failure of employers/insurers to properly report cases affects the timeliness of employee medical and temporary disability benefits and results in higher case costs. In addition, division officials did not have sufficient information to determine if compensation claims were paid on time or at all.

Law governing late injury reporting

Section 287.380, RSMo 2000 requires employers/insurers to report work related injuries to the division within 10 days after knowledge of an accident. It also requires employers/insurers to report medical and temporary disability cost data to the division, as the division shall require. According to the law, those violating the injury-reporting and cost-reporting requirements are guilty of a misdemeanor and subject to a penalty of \$50 to \$500, or a week to a year in county jail or both, on conviction.

Section 287.400, RSMo 2000 provides that upon receipt of notice of an accident, division personnel must notify injured employees suffering lost time or permanent disability of their rights. Injured employees with no lost time or no permanent disability are provided a letter informing them an injury report was filed and their options. The employer/insurer should notify the division as soon as benefit payments are started and terminated. In the event a dispute arises between the employer/insurer and the employee regarding benefit payments, the division should assist the employee in filing a claim and securing an early adjudication of the case.

Section 287.140, RSMo 2000 requires employers to provide medical care to injured employees and provides the employer the right to select the treating physician, surgeon, chiropractic physician, or other health care provider. The law also provides that the employee shall have the right to select his own physician, surgeon, or other such requirement at his own expense.

Most injury reports were reported late and some not at all

An analysis showed 428,495 of 459,673 (93 percent) of closed cases were reported late (more than 10 days) or not reported at all. According to the division's employer manual, "Recent studies conducted by the insurance industry show that an injury reported 15 to 21 days after an accident will typically have 19 percent longer disability duration and 18 percent higher costs than one reported within 7 days." Auditors used Department of Labor and Industrial Relations (department) and division data for fiscal years 1998 through 2001 to determine case costs (costs include temporary disability, medical, and death benefits). Auditors calculated a 28 percent cost increase (\$426 more) per case for cases reported after 10 days and a 554 percent cost increase (\$8,344 more) per case for cases not reported at all as shown in Table 1.1.

Nearly \$300 million in extra costs

Table 1.1: Analysis of Case Timeliness and Costs

Description of Activity (1)	Number of Cases (2)	Total Case Costs (3)	Average Per Case Cost (3) ÷ (2)	Average Per Late Case Cost Increase
Reported on-time	31,178	\$ 46,924,787	\$ 1,505	
Reported Late (>10 days) ¹	413,835	799,232,654	1,931	\$ 426
Not reported	14,660	144,387,619	9,849	8,344

¹ 249,238 of these cases representing \$527 million in total costs were not reported within 30 days.

Source: Department and division cost data

Auditors compared the average cost to process cases reported timely to the average cost to process cases reported late or not reported to determine cost increases. To obtain the overall cost increase for cases reported late or not reported, auditors multiplied the increase in average case cost for cases reported late by the total number of cases reported late or not reported. Of the \$990 million total workers' compensation costs during our audit period, more than \$298 million (30 percent) were actual extra costs for cases reported late and cases not reported (\$426 x 413,835 plus \$8,344 x 14,660).

In addition to most cases being reported late, some cases were not reported at all or until the injured employee filed a claim. For example, an employee was not receiving benefits because the employer did not file an injury report with the division. As a result, the employee who was eligible for benefits was not receiving them. The employee contacted the division's mediation unit which confirmed the employee's eligibility. The employee began receiving benefits about 45 days after the injury occurred.

Some state agencies also reported injuries late

Six state agencies reported injuries late for 25 percent (2,643 of 10,436 cases) of cases reported during fiscal years 1998 through 2001. Injuries reported late resulted in overall higher costs to the state.

The Central Accident Reporting Office (reporting office), a unit within the Office of Administration, administers the state’s workers’ compensation program for most state agencies. According to a reporting office official, agencies reporting late are contacted to determine the reason and to encourage timely reporting. The official stated the agencies give various excuses for not reporting injuries timely.

Division officials have not effectively used sanctions against late reporting employers/insurers

Although state law provides for fines and penalties for employers/insurers who report injuries late, the law does not provide legal authority to the division to impose and collect fines or to impose penalties, as allowed in other states. As a result, the division would have to refer such cases to the Attorney General's office for criminal prosecution. However, such referrals have not taken place nor have persistent violators been sent warning letters. Violators are only sent a letter regarding the need to submit an injury report when an employee files a claims and no report on this injury was previously submitted. For example, the top 10 employers and top 10 insurance carriers listed in Table 1.2 accounted for almost 41 percent of the 416,063 open and closed cases reported late for the 4-year period covered in our review. None of these entities had been referred for prosecution.

Table 1.2: Top Ten Employers/Insurers Who Reported Injuries Late And Total Number Of Injuries Reported Late

Top 10 Employers	Injury Total	Top 10 Insurers	Injury Total
Wal-Mart	6,930	Liberty Mutual Insurance Company	23,397
City of St. Louis	4,049	Missouri Employees Mutual	20,238
Trans World Airlines	3,692	Travelers Insurance	18,411
Ford Motor Company	3,499	Kemper Insurance Group	14,080
Fulton State Hospital	3,356	Insurance Company of Pennsylvania	12,669
United Parcel Service	3,136	Zurich North America	9,531
Tyson Foods	2,991	CNA Insurance	9,454
Curators of the University of Missouri	2,624	Hartford Insurance Group	9,449
St. John's Mercy Health System	2,418	Employers Insurance Wausau	9,083
City of Kansas City	<u>2,392</u>	American Compensation Insurance	<u>8,835</u>
Total	<u>35,087</u>	Total	<u>135,147</u>

Source: Auditor analysis of department and division data

The division director acknowledged that primarily because of his prolonged illness, changes to the division's policy prohibiting referrals were not made, since he took the position in August

2000. As a result, employers/insurers were not held accountable for timely reporting and could continue noncompliance. He stated that the policy regarding referrals has been reversed and referrals will be made in the future. He indicated the Attorney General's office has already been contacted. The division director also stated current penalties for untimely reporting would be sufficient deterrents to non-compliance if the division had authority to apply them as administrative civil penalties per occurrence. Current law only provides for the Attorney General to seek the penalties. The division director noted further that some late reporting by insurance companies may be the result of the insured employer reporting late to the insurance carrier.

Oklahoma and Tennessee law gives these state's workers' compensation divisions authority to impose fines and penalties on employers/insurers who violate reporting requirements. According to an Oklahoma state official, repeat offenders are tracked and sent a letter regarding penalties the division could impose. The official said this process has been effective, since the state has never had to issue a fine. A Tennessee state official said a letter reminding employers/insurers of the fines and penalties generally causes them to correct the problem. The Missouri division director stated, California, New York, Colorado, and Wisconsin also provide sanctioning authority to their workers' compensation divisions without involving the Attorney General's office.

Other states have more effective penalty assessment procedures

Employers, insurers and state agencies were not properly reporting all medical cost data

Benefit cost data for 163,152 of 432,619 (38 percent) closed medical cases¹ and 25,646 of 77,988 (33 percent) closed temporary disability benefit cases,¹ were not included in the division's database for the period covered in our review. Without the cost data, division personnel could not determine if (1) medical and temporary benefits to injured employees should have been paid, (2) were paid, or (3) were paid timely. This weakness diminishes the division's ability to efficiently and effectively administer the workers compensation laws. For example, the law provides the division can add a 10 per cent per annum interest penalty to uncontested weekly benefits if payments are made more than 30 days after the due date.

The law requires employers/insurers to pay medical benefits at the time of injury and temporary disability benefits after a 3-day wait following a work related injury. Analysis of division data identified an additional 20,148 injured employees who may not have received eligible benefits until at or after final case settlement. Proper reporting of cost data would have allowed division personnel to determine if the payments were made timely. Payments could have been made prior to case settlement for these cases, but the division received no payment information prior to the settlement or received incomplete information on specific payments at settlement. As a result, since the payment dates were unknown, records listed benefits paid at or after case settlement.

According to the director, in all cases with a docket setting the injured employee is asked if all medical and temporary benefits were paid. If not, the issue is addressed by the administrative

¹ Not including cases involved with work related diseases.

law judge or legal advisor with the insurance company. However, he acknowledged that the majority of cases are administratively closed and are not placed on a docket. As a result, if cost data is not properly reported, when requested, in these cases division staff do not know if the costs were paid or paid timely. As is the case with late injury reporting, the law prescribes a penalty for employers/insurers that do not report benefit cost data as required; however, the division does not have authority to impose sanctions and prosecution would have to be handled through the Attorney General's office.

Because final case settlement could take several months to several years after an injury occurs, it is important for division personnel to know when the payments were actually made. Analysis showed the average time to settle a case for the period covered in our review was 1 year.

The division director said he could not refer violators to the Attorney General's office because he did not have the information to determine the accuracy of cost data reported or the status of non-reported data. He said the division was sending letters to confirm cost data, but the frequency of the letters has been reduced due to limited resources. As a result, division personnel do not know if employers/insurers reported cost information correctly or even report such data. The director also said cost data is not submitted electronically, and he is exploring options for obtaining cost data in this way.

Conclusion

Employers/insurers, under threat of penalty, are required to report injuries to the division within a prescribed time period following accidents and to report medical and temporary benefit costs as the division requires. However, the majority of injuries reported were reported late with many of them reported significantly late. Late injury reporting increases case costs and delays the benefits due to injured employees. Late injury reporting has continued to occur because division officials have not referred persistent violators to the Attorney General's Office for prosecution.

Recommendations

We recommend the Director, Department of Labor and Industrial Relations:

- 1.1 Send letters reminding employers/insurers and state agencies of the penalties for failing to report injuries and cost data for reporting late.
- 1.2 Refer persistent violators to the Attorney General's office for prosecution.

We recommend the General Assembly:

- 1.3 Amend Section 287.380, RSMo 2000 to give the division authority to enforce specified sanctions against late reporters without having to prosecute through the Attorney General's Office, and clarify statutory language to show sanctions can be assessed per occurrence.

Department of Labor and Industrial Relations Responses

- 1.1 The Division will revise the letters to employers/insurers to include a reference to the penalties for failing to report injuries and for late reports of cost data. The Division is currently preparing a list of CY 1999-2001 data on late reporting to send such information to the insurance carriers doing business in the State of Missouri.*
- 1.2 The Division started this in June 2002.*

2. Timely Benefits Were Not Always Provided to Claimants

Employers/insurers did not always provide timely medical and temporary disability benefits to injured employees because they denied or disputed employee injury claims. State law does not provide protection for an injured employee when employers/insurers deny or dispute the employees' claim. Employers/insurers are not required to pay benefits for denied or disputed claims prior to a division judge's binding ruling or final case settlement. A binding ruling or settlement could take several months or years resulting in delayed medical care and temporary disability benefits.

Law governing timely medical and temporary benefit payments

Section 287.140, RSMo 2000 requires in addition to all other compensation, the injured employee shall receive and the employer shall provide all such medical treatment as may reasonably be required after the injury or disability to cure and relieve from the effects of the injury.

Section 287.160, RSMo 2000 provides after a 3-day wait, temporary disability benefits shall be payable as wages were paid prior to the injury, but in any event at least every 2 weeks. Temporary and final lump sum benefit payments made more than 30 days after becoming due shall be increased by 10 percent simple interest per annum provided the payments are not contested by the employer/insurer.

In addition, Section 287.460, RSMo 2000 allows for hearings or mediations to settle disputed (denied) cases. However, the law does not provide criteria for employers/insurers to meet when disputing or denying claims. As a result, employers/insurers can deny or dispute claims at any time without having to provide medical or temporary benefits until there is a division judge's binding ruling or final case settlement. There are no penalties for routinely denying claims to avoid or delay payment unless a hearing is held and a judge determines the claim should not have been denied. The division director stated the number of hearings held is very low compared to the number of employee claims.

Employees receive a notice of rights letter when they file a claim or the division receives information the injury involves the payment of temporary total disability benefits or permanent disability benefits. The division's dispute management staff work with injured employees to resolve issues of obtaining medical treatment or the payment of temporary total disability benefits. The division's adjudication staff conduct docket settings to assist all parties in resolving workers' compensation disputes.

Not receiving timely medical and temporary benefits can impose significant hardships

The following excerpts from injured employee files show examples of hardships injured employees suffered because they were not provided timely medical and or temporary disability benefits.

Examples of cases with untimely benefit payments²

Excerpts from letter to the Division of Workers' Compensation from claimant's attorney dated December 12, 2000 (injury occurred on June 29, 2000)

On November 28, 2000, a hardship hearing was scheduled before a division judge with issues for resolution the payment of temporary total compensation and the furnishing of medical treatment. On November 27, 2000, the employer and insurer agreed to pay the temporary total compensation and provide medical treatment rather than proceed with the hardship hearing. The claimant had shoulder surgery on December 11, 2000. The employer/insurer still has not paid temporary total compensation which is due and owing from July 3, 2000, up to and including the present time. During this over 5-month period of time, the claimant has had no income and the insurer still has not paid the temporary total compensation.

Excerpts from claimant e-mail to the Governor's office dated April 17, 2000

I am needing help with my workman's comp case. My lawyer doesn't seem to be helping on getting my back compensation that is owed to me even though I have had an MRI showing the injury and a doctor's statement stating that injury happened when working on the job. I have a family of five that I can no longer support. This case has been going on for almost a year. My wife now gets food stamps and the cash to help. For our family we receive \$506 a month for the food and \$388 a month on the cash. That helps but the housing cost us \$378 a month for rent alone. I don't know where else to turn we have pawned a lot just to try to keep up when we shouldn't even be on the welfare system if the insurers would stop dragging their feet and pay me. I don't know where else to turn to get the ball rolling so we can live again not on the system. I would like any suggestions on what to do.

Excerpts from division mediation unit case file (shows untimely benefits resulting from injury non-reporting)

The employee, was a laborer for a landscaping contractor in the area. He said that he had injured his neck, back and left shoulder while lifting heavy bags of fertilizer and grass seed on May 8, 1999. He said that his employer refused to provide any medical treatment to him, refused to report the injury to its workers' compensation insurer and had fired him when he continued to request medical treatment.

Since no report of injury was on file with the division, a case file was set up and injury number assigned based upon the information supplied by the employee over the telephone. The mediator informed the employee that the division had no jurisdiction over the issue of the legality of the termination of his employment. However, the employee's right to seek the benefits afforded by this State's Workers' Compensation Law indeed

² We edited narratives to protect identities, and for clarity purposes where needed. Grammar corrections were not made.

continues even if the job does not. The same day, the mediator spoke with a claim representative of the employer's workers' compensation insurer and was told that the insurer had received no first report of injury from the employer but the claim representative would query the employer in order to establish a file and begin its investigation. On July 23, 1999, the claimant called the mediator to report that he had begun receiving Temporary Total Disability Benefits (TTD) and medical care authorized by the employer/insurer.

According to division officials, lack of employers/insurers providing timely medical and temporary disability benefit payments to claimants is a significant problem. Staff from the division's mediation unit estimated about 90 percent of mediation cases are related to medical and/or temporary disability benefit payments.

Additional excerpts from case files are shown in Appendix III, page 15.

Conclusion

Employees were not always provided timely medical and temporary disability benefits because employers/insurers sometimes denied or disputed employee injury claims or delayed payment. As state law is currently written, there are no criteria for employers/insurers to meet in denying claims. As a result, when claims are denied or disputed, employers/insurers are not required to pay benefits until after a division judge's binding ruling or final case settlement.

Recommendation

We recommend the General Assembly:

- 2.1 Amend labor laws to require employers/insurers to begin and continue to pay medical and temporary benefits unless specific criteria are met for disputing/denying/delaying payment. Unless specific criteria are met by the employer/insurer benefit payments should continue until a division judge's binding ruling or final settlement. Provide sanctions for violating established criteria

3. Administration of the Workers' Compensation Program Could Be Improved

Better support is needed for and better communication is needed with workers' compensation claimants.

- Letters to un-represented claimants (those without attorneys) regarding case review and settlement conferences did not contain sufficient information.
- Injury reports are not required to be filed electronically with the division as is the case in some other states.

As a result, some un-represented claimants were not informed of the purpose for the conferences or aware of why they were asked to attend, and case processing was delayed.

The division does not provide sufficient information to claimants without attorney representation regarding conferences they are asked to attend

During visits to regional adjudication offices, auditors noted un-represented claimants were not always aware of why they were asked to attend conferences. For example, at one location, a claimant attending a conference had no idea what the conference was about or why she was asked to attend. Division officials agreed that un-represented claimants sometimes do not know why they are asked to attend conferences at division offices.

The division sends each party a "Notice of Conference" letter, which states the date, time, and place of the conference and lists the parties that should be in attendance. The "Notice of Conference" letter does not include what the conference is about or why a claimant has been asked to attend. More importantly, the letter does not provide any information regarding issues on which the claimants may need to make a decision. The letter fails to inform claimants of their rights under state workers' compensation laws. As a result of these weaknesses, division judges, who cannot provide legal advice, must spend extra time explaining the process and claimant's rights. At the conferences, where employers/insurers were required to have attorneys, some claimants may have been expected to make decisions regarding the settlement of their case. The decisions made when a claimant's case is settled are critical because after the case is settled the claimant is generally not entitled to further medical or other benefits.

We suggest adding the following or similar language (taken primarily from other division letters) to the "Notice of Conference" letter.

Each of the above parties is hereby notified that the above captioned case is set for conference, and all parties should be present at the time and place specified below. This conference is set to determine status of employee health and if the employee has received benefits he/she is eligible for under Missouri Workers' Compensation law. Those benefits, in most cases, include:

- Medical care (When necessary to treat the injury. The employer has the right to choose who will provide medical treatment.)

- Payment for lost wages while off work. (Usually two-thirds of your actual wages.)
- Payment for permanent disability, if any. (Available after completion of medical treatment and your injury results in a permanent disability. A doctor generally will evaluate a permanent disability.)

Missouri does not require employers/insurers to report injuries electronically

Although the division has a system and capability to receive injury reports electronically, the state does not require employers/insurers to report electronically as some other states do. As a result, employers/insurers submit only about 60 percent of the required information electronically. According to agency officials and our analysis, submitting required information electronically was generally more timely and efficient. For example, analysis shows that for 3 of the 4 years covered in our review (except for the first year of system implementation), injuries reported electronically were reported on average 6 to 11 days faster than injuries reported manually.

The law requires employers/insurers to report injuries to the division within 10 days after knowledge of the injury. Division officials stated they do not have clear statutory authority to require electronic reporting. The officials said they are currently looking into the legality of establishing such a rule, but at the time of our report no decision had been reached.

Conclusion

Administrative weaknesses hinder the efficient and effective management of the program. As a result, insufficient information provided to some injured employees may hinder them making fully informed decisions during case settlement conferences. Also, electronic reporting would enhance timeliness.

Recommendations

We recommend the Director, Department of Labor and Industrial Relations:

- 3.1 Restate the employees' rights under the workers' compensation law in the "Notice of Conference" letter and clearly state the purpose for the conference.
- 3.2 Require employers/insurers to submit injury reports electronically.

Department of Labor and Industrial Relations Responses

- 3.1 *The Division has complied with this recommendation. The revised notices have been in use since June 2002.*
- 3.2 *The Division is drafting a rule to require this and anticipates it will be in effect in 2003.*

OBJECTIVES, SCOPE AND METHODOLOGY

Objectives

The audit objectives were to assess the vulnerabilities of the workers' compensation program and determine if the program was managed efficiently and effectively to ensure timely benefits to injured employees.

Scope and Methodology

To accomplish the audit objectives we:

- Reviewed state laws and regulations that govern the workers' compensation program.
- Reviewed division policies and guidelines that govern operations of the division and its eight regional adjudication offices.
- Interviewed officials from division headquarters and each of its eight adjudication offices to determine policies and practices in implementing the workers' compensation program.
- Interviewed officials from the state Attorney General's Office, the Department of Insurance, and the Central Accident Reporting Office.
- Contacted other states and obtained reports regarding workers' compensation issues.
- Contacted Department of Labor and Industrial Relations information systems officials and obtained statistical data on processing employee injuries from July 1, 1997, through June 30, 2001, and developed analyses based on the data provided.
- Reviewed reports on workers' compensation issues developed by the Workers' Compensation Research Institute.
- Reviewed injured employee complaint letters submitted to the division through various sources.
- Observed conferences, case settlements, and court hearings during visits to adjudication offices.

Our analysis focused on the efficiency and effectiveness of the workers' compensation program to provide timely benefits to injured employees, and included such things as the timeliness of injury reporting and case processing, and costs associated with case processing.

BACKGROUND

The Department of Labor and Industrial Relations - Division of Workers' Compensation (division) is responsible for providing prompt and equitable adjudication of all cases of injury that are reported. The division administers the Workers' Compensation Law, Chapter 287, RSMo 2000 to ensure injured employees receive prompt and adequate medical treatment, and payment of wage loss benefits. Division personnel also ensure compensation for permanent disability and physical rehabilitation for the severely injured by providing assistance to injured workers by filing claims and conducting hearings to resolve disputes between employers and employees relating to workers' compensation benefits. Division operations are funded by a tax, not to exceed 2 percent, on each employer's net workers' compensation insurance premiums and on calculated equivalent premiums for self-insured employers.

A division director administers the workers' compensation program with the assistance of a deputy director, a chief legal advisor, and eight chief administrative law judges. The chief administrative law judges are assigned to adjudication branch offices located in Cape Girardeau, Jefferson City, Joplin, Kansas City, St. Charles, St. Joseph, St. Louis, and Springfield. In addition to the branch office locations, legal proceedings are scheduled in 43 other locations. As of February 2002, legal staff consisted of 27 administrative law judges assisted by 20 legal advisors.

In addition to the above structure, within the division there are several units and programs designed to help carry out the workers' compensation mandate. The units and programs include the (1) Fraud and Noncompliance unit, (2) Dispute Management program, (3) Medical Services unit, (4) Physical Rehabilitation unit, (5) Vocational Rehabilitation program, (6) Medical Fee Disputes unit, and (7) the Workers' Safety program. The division is also responsible for administering the Second Injury Fund and the Crime Victim's Compensation Program.

The State Treasurer's Office is the custodian of the Second Injury Fund and the Attorney General's Office represents the state in crime victims' claims and workers' compensation cases of state employees, including claims involving the Second Injury Fund.

EXCERPTS FROM INJURED EMPLOYEE COMPLAINT LETTERS

The following excerpts show employers/insurers did not always provide employees timely medical treatment or temporary disability benefits.³ Because of this problem, injured employees had to seek medical treatment on their own while not receiving income.

Excerpts from employee case file dated 12/14/98 and letter to the Governor dated February 1, 2000

From case file

I was seen by the company nurse on November 9, 1998; however, the company refused me medical attention. I was forced to see my own doctor. I have been under therapy treatment three times a week since the accident. I have been diagnosed as having a disc injury. I have been off work since November 9, 1998. (Document dated 12/14/98).

From letter

I had a work related injury on Mon Nov 09, 1998.

I have not worked since Mon Nov 09, 1998. (Almost 14 months)

I have not received any workers compensation or benefits as of this date. (February 1, 2000)

I have no income at present time; my spouse is the sole support for our family at this present time. It is hard for us to pay our mortgage and pay our energy bills. We just do the best we can to make it from day to day. Can you assist us?

Excerpts from a letter to the Department of Labor and Industrial Relations - Division of Workers' Compensation, dated October 25, 2000

In August 1999, I sustained a serious lower back injury (bulging disc) "on the job." My direct supervisor (Ms. X) was aware of the incident and insisted that I file an incident report. As instructed, I immediately reported the injury that day. After reporting the injury, I repeatedly discussed the matter with management with absolutely no results. Instead, I used all of my sick leave and annual leave getting treatment from my doctor.

Although, I provided a timely report of my injury, I was not given an opportunity to be medically treated or was I advised that my employer had workers' compensation insurance. Instead my employer immediately subjected me to an unbearable situation in

³ We edited the narratives to protect identities, and for clarity purposes where needed. Grammar corrections were not made.

APPENDIX III

that management without notice and under the threat of being fired increased (her workload). (The greater workload) caused me further injury. After this second injury on top of the first, my health quickly deteriorated causing me to lose time off work and requiring the attention of a doctor.

While my injury and subsequent condition was well known by (staff) and senior management they did not offer me any medical treatment or an opportunity to be medically evaluated. They took no effort to investigate my condition or the incident.

I had to use my own sick leave and annual leave to seek treatment from our family clinic. I took leave on advise of my doctor with my husband's insurance covering the expenses. I shared all of this information with my employer. While on extended sick leave my employer terminated my employment. At that point we hired a lawyer to resolve the matter but the negotiations broke down when the employer insisted that I sign a complete release, including all workers' compensation claims.

To date, I have been off work continually because of this lower back injury for over a year. I have not received any form of compensation or assistance since my doctor advised me to stop work in October 1999.

After my experience this past year, I am convinced that my employer along with its workers' compensation carrier and their lawyer have conspired through actions of "fraud and noncompliance" to circumvent Chapter 287 of the Missouri Workers' Compensation Laws. The damage to me and my family is beyond calculations. We are now on the verge of bankruptcy. Our good credit is destroyed. We are being sued in court on a credit card. We are behind on our house and car payments. I am very much afraid that my husband, who is a state employee in a politically sensitive position, will have to resign if we are subjected to further lawsuits over inability to meet our financial obligations. The stress of this situation is unbearable. At the recommendation of my doctor I have been seeing a therapist for stress and deep-depression. This all because my employer in collusion with its insurance company chooses not to follow the law.

Excerpts from a letter to the Governor, dated June 18, 2000

My husband was injured 2 years ago when he tripped and fell while working in the kitchen of a local restaurant, he is a cook. He fell as result of very careless behavior on the part of the restaurant manager. The company did not fill out an accident report. Did not take him to a doctor or hospital. The manager only yelled obscenities at him for falling and dropping the tray of meat he was carrying at the time. He had to finish his shift or lose his job. He continued to work even though he was in terrible pain for two days because he knew if he took time off to go to the doctor he would be fired.

Finally on his day off I insisted that we get him some help. We thought he had only pulled a muscle. The doctor's office asked what happened and we were told that since it

APPENDIX III

happened at work they must seek approval from the employer and insurance company. They would not allow me to pay for the visit. Again, we were trying to keep from losing the job.

As I said that was two years ago. Since then (her husband) has been to several doctors. Here in, (city) and even at the VA hospital in (city). We have all of the records from these doctors and hospitals. We have x-rays, MRI, and Drs. Statement. (These doctors) all find considerable damage to the vertebrae and disks of his lower back. Dr. (X) recommended surgery. At that time (her husband) wanted to try anything else to keep from having it; however, he now realizes that surgery is inevitable if he is ever going to be relieved of pain.

I and our two 14-year-old boys have watched him suffer so much lately. He just last week completed a series of epidurals ordered by Dr. (X) to give him a little relief from the pain. We have the services of an attorney now but still can get no relief for my husband.

The insurance company denies responsibility even though (her husband's) employer acknowledged in writing responsibility for the fall. We requested an emergency hearing when he was in so much pain. We never heard anything from the insurance company or their attorney.

We finally had a mandatory mediation hearing set for June 13, 2000. The judge was there, our attorney was there, we were there, but the insurance company attorney, Mr. (Y) did not even show up. We were told that nothing could be done and we would have to wait another 90 days for another hearing. There must be something wrong with a system that allows a company to ignore the pleas of an injured worker and his family.

We are the working poor. We both worked and I still work in the (X) Industry in (city). We understand that there must be a lot of fraud in the insurance and workers' compensation field. And a lot of it on the part of the worker. But should it be a condoned practice for the insurance company to treat all injured workers, such as my husband as though they are not truly injured and are trying to get something for nothing.

Please, I ask you to take a look at our situation and perhaps you can intervene or tell us where to find help. Surely the insurance companies, their attorneys and certain doctors have to answer to someone for their actions.

I am sure we are not the only people to find themselves in this situation. We have found during this 2-year period that many people have had problems with the workers comp system. We try to understand the thinking on the part of the companies but find it difficult to believe that we have no alternative to this situation.

Excerpts from a letter to the Governor, dated April 23, 2001

This is the first time that I have written to an elected official. I am a 54-year-old male, college graduate, veteran, with no criminal record, and an individual who has maintained an excellent credit record. On December 21, 2000, I injured my right foot while performing my duties as the night supervisor at work. The injury to my right foot resulted in an internal infection that put me in the hospital for five days.

Today is April 23, 2001. I have not received any compensation for lost wages or medical bills. My employer, where I have been employed for over six years, even withheld my annual Christmas bonus. I have not returned to work because the injury has never been treated (just the infection).

On January 19, 2001, I tried to get help from the Division of Workers' Compensation because I was being told to wait by the employer's insurance company. Workers' Compensation Judge (Z) told me that the insurance company was waiting for my medical records before validating the claim. I spoke with (Mr. P) at the Division of Workers' Compensation in Jefferson City, Missouri on February 13, 2001, and again on February 19, 2001. He told me that the insurance company for my employer had not returned his calls. I told Mr. (P) that at this point I had no alternative but to seek legal representation.

I have already lost my residence of the past three years. My daughter had to drop out of college to help cover monthly bills. My income suddenly stopped but the bills have not. The point here is that the insurance company has no time frame in which to respond. I believe new legislation needs to be enacted to protect workers from the situation I am in. Missouri's current laws do not protect the taxpaying citizen who is injured on the job.

What I am asking you to do is look into this particular situation to see if new legislation is needed to protect the honest worker who is injured on the job.